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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/398,842	09/17/1999	TERRILL A. YOUNG	6900R	1564

27752 7590 05/23/2003

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EXAMINER
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WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 05/23/2003

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**MAILED**  
**MAY 23 2003**  
**GROUP 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 21

Application Number: 09/398,842  
Filing Date: September 17, 1999  
Appellant(s): YOUNG ET AL.

Edward J. Milbrada  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3/12/03.

Art Unit: 3761

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The brief makes a statement that all claims stand and fall together with respect to all issues present.

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 3761

**(9) Prior Art of Record**

6,120,783	ROE ET AL.	9-2000
4,695,278	LAWSON	9-1987
6,103,647	SHULTZ ET AL.	8-2000
5,783,503	GILLESPIE ET AL.	7-1998

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Appellant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, and 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al (6,120,783) in view of Gillespie et al. (5,783,503), and Shultz et al. (6,103,647).

Art Unit: 3761

With respect to Claims 1, 7, 19 and 20: Roe discloses an absorbent article (20) with a backsheet (42), a topsheet (38) and an absorbent core (48) located there between. Roe discloses the use of barrier cuffs (62) with a proximal edge (64), a distal edge (66), where proximal edge is secured to the outercover and uses spacing elastic elements (76). Roe discloses the use of an effective amount of skin care composition provided on the carrier cuffs (see claim 7).

Roe, as disclosed above, teaches the use of the barrier cuffs being spunbond polypropylene (col. 12, line 66 to col. 13, line 26), but fails to teach the use of a fiber having a denier of less than 1.3.

Gillespie teaches the use of microdenier fibers with a denier in the range from 0.1 to 0.3 denier per filament (column 6, lines 28-31) and can be made from polypropylene (column 5, lines 1-16) and are used in spunbond products (column 2, lines 4-8) and can be used for such things as topsheets, backsheets and leg cuffs in diapers (column 7, lines 11-15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the barrier cuffs of Roe be made from the microdenier fibers of Gillespie, in order to produce nonwovens of surprising strength, barrier and cover. (see Gillespie, abstract)

Roe and Gillespie disclose the use of polypropylene microdenier fibers, but fail to disclose the use of metallocene polypropylene spunbond fibers.

Shultz discloses the use of metallocene polymers, such as polypropylene, and can be developed by spunbonding (column 9, lines 25-32; column 10 lines 63-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the polypropylene fibers of Roe and Gillespie to be metallocene

Art Unit: 3761

polypropylene fibers, as disclosed by Shultz, in order to provide a fabric that has excellent barrier, breathability, elasticity and a pleasing hand. (see Shultz column 9).

With respect to Claims 2, 5 and 6: Roe discloses the barrier cuffs being made using spunbonded techniques, which does not have any meltblown fibers. (column 12, line 66 to column 13, line 26).

With respect to Claim 3: Roe discloses the topsheet and the barrier cuffs are made from the same element (column 13, lines 59-65) and discloses the topsheet having a basis weight of 14 grams per square meter (column 11, lines 1-12).

With respect to Claim 8: see Roe claim 13.

With respect to Claim 9: see Roe Claim 8.

With respect to Claim 10: see Roe Claim 9.

With respect to Claim 11: see Roe Claim 10.

With respect to Claim 12: see Roe Claim 12.

With respect to Claim 13-16: Roe discloses a skin care composition being placed either the body facing surface, or the garment facing surface and capable of transferring from the garment facing surface to the body facing surface (column 8, line 54 to column 9, line 22).

With respect to Claim 17: Roe discloses the use of gasket cuffs (56).

Claims 1-2, 5, 6, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson (4,695,278) in view of Gillespie et al. (5,783,503), and Shultz et al. (6,103,647).

With respect to Claims 1 and 19: Lawson discloses an absorbent article (20) with a backsheet (42), a topsheet (38) and an absorbent core (48) located there between. Lawson

Art Unit: 3761

discloses the use of barrier cuffs (62) with a proximal edge (64), a distal edge (66), where proximal edge is secured to the outercover (Figure 3) and uses spacing elastic elements (76).

Lawson, as disclosed above, teaches the use of the barrier cuffs being spunbond polypropylene (column 9, lines 1-12), but fail to teach the use of a fiber having a denier of less than 1.3.

Gillespie teaches the use of microdenier fibers with a denier in the range from 0.1 to 0.3 denier per filament (column 6, lines 28-31) and can be made from polypropylene (column 5, lines 1-16) and are used in spunbond products (column 2, lines 4-8) and can be used for such things as topsheets, backsheets and leg cuffs in diapers (column 7, lines 11-15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the barrier cuffs of Lawson be made from the microdenier fibers of Gillespie, in order to produce nonwovens of surprising strength, barrier and cover. (see Gillespie, abstract).

Roe and Gillespie disclose the use of polypropylene microdenier fibers, but fail to disclose the use of metallocene polypropylene spunbond fibers.

Shultz discloses the use of metallocene polymers, such as polypropylene, and can be developed by spunbonding (column 9, lines 25-32; column 10 lines 63-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the polypropylene fibers of Roe and Gillespie to be metallocene polypropylene fibers, as disclosed by Shultz, in order to provide a fabric that has excellent barrier, breathability, elasticity and a pleasing hand. (see Shultz column 9).

With respect to Claim 2, 5 and 6: Lawson discloses that the barrier cuffs may be spunbonded, therefore no (0%) meltblown fibers are used.

Art Unit: 3761

With respect to Claim 17: Lawson discloses the use of gasket cuffs (56).

With respect to Claim 18: Lawson discloses the topsheet and the barrier cuffs are made from the same element (column 9, lines 52-57).

**(11) *Response to Argument***

With respect to Issue 1: the appellant has argued that the use of a Gillespie reference saying that Gillespie only discloses the use of multi-component fibers, and the splitting of these fibers is what causes it to be micro-denier, and due to the fact that the claims state the use of a nonwoven “consisting essentially of” metallocene polypropylene, therefore the claims do not have room for multi-component fibers. It should be noted that the examiner is relying on the Gillespie reference only for the teaching of the denier of the fibers, not the actual composition of the fibers. Appellants state that the only way to make the fibers of Gillespie be micro-denier is to have them split, however in Gillespie the specification states that the filaments are useful without splitting (column 2, lines 59-62), and states that micro-denier filaments of low orientation have previously been obtained by melt blowing (column 6, lines 29-33). Therefore showing that it is not the separation that is essential in making the fibers microdenier. The invention does not require that the fibers be multicomponent and split in order to achieve the micro-fiber denier. Therefore, the teaching that a fiber be micro-denier is still present in the Gillespie reference, and therefore there is still motivation to make a single component fiber be micro-denier.

With respect to Issue 2: The appellant has used the same arguments as for Issue 1, stating that Gillespie only discloses the use of multi-component fibers, and the splitting of these fibers is what causes it to be micro-denier, and due to the fact that the claims state the use of a nonwoven



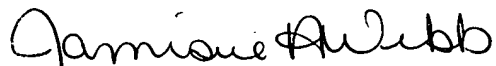
Art Unit: 3761

“consisting essentially of” metallocene polypropylene, therefore the claims do not have room for multi-component fibers. And as stated above, it should be noted that the examiner is relying on the Gillespie reference only for the teaching of the denier of the fibers, not the actually composition of the fibers. Appellants state that the only way to make the fibers of Gillespie be micro-denier is to have them split, however in Gillespie the specification states that the filaments are useful without splitting (column 2, lines 59-62), and states that micro-denier filaments of low orientation have previously been obtained by melt blowing (column 6, lines 29-33). Therefore showing that it is not the separation that is essential in making the fibers microdenier. The invention does not require that the fibers be multicomponent and split in order to achieve the micro-fiber denier. Therefore, the teaching that a fiber be micro-denier is still present in the Gillespie reference, and therefore there is still motivation to make a single component fiber be micro-denier.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3761

Respectfully submitted,



Jamisue Webb

May 22, 2003

Conferees



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